

1 AN ACT concerning regulation.

2 **Be it enacted by the People of the State of Illinois,**
3 **represented in the General Assembly:**

4 Article 1. General Provisions

5 Section 1-1. Short title. This Act may be cited as the
6 Payday Loan Reform Act.

7 Section 1-5. Purpose and construction. The purpose of this
8 Act is to protect consumers who enter into payday loans and to
9 regulate the lenders of payday loans. This Act shall be
10 construed as a consumer protection law for all purposes. This
11 Act shall be liberally construed to effectuate its purpose.

12 Section 1-10. Definitions. As used in this Act:

13 "Check" means a "negotiable instrument", as defined in
14 Article 3 of the Uniform Commercial Code, that is drawn on a
15 financial institution.

16 "Commercially reasonable method of verification" or
17 "certified database" means a consumer reporting service
18 database certified by the Department as effective in verifying
19 that a proposed loan agreement is permissible under this Act,
20 or, in the absence of the Department's certification, any
21 reasonably reliable written verification by the consumer
22 concerning (i) whether the consumer has any outstanding payday
23 loans, (ii) the principal amount of those outstanding payday
24 loans, and (iii) whether any payday loans have been paid in
25 full by the consumer in the preceding 7 days.

26 "Consumer" means any natural person who, singly or jointly
27 with another consumer, enters into a loan.

28 "Consumer reporting service" means an entity that provides
29 a database certified by the Department.

30 "Department" means the Department of Financial and

1 Professional Regulation.

2 "Secretary" means the Secretary of Financial and
3 Professional Regulation.

4 "Gross monthly income" means monthly income as
5 demonstrated by official documentation of the income,
6 including, but not limited to, a pay stub or a receipt
7 reflecting payment of government benefits, for the period 30
8 days prior to the date on which the loan is made.

9 "Lender" and "licensee" mean any person or entity,
10 including any affiliate or subsidiary of a lender or licensee,
11 that offers or makes a payday loan, buys a whole or partial
12 interest in a payday loan, arranges a payday loan for a third
13 party, or acts as an agent for a third party in making a payday
14 loan, regardless of whether approval, acceptance, or
15 ratification by the third party is necessary to create a legal
16 obligation for the third party, and includes any other person
17 or entity if the Department determines that the person or
18 entity is engaged in a transaction that is in substance a
19 disguised payday loan or a subterfuge for the purpose of
20 avoiding this Act.

21 "Loan agreement" means a written agreement between a lender
22 and consumer to make a loan to the consumer, regardless of
23 whether any loan proceeds are actually paid to the consumer on
24 the date on which the loan agreement is made.

25 "Member of the military" means a person serving in the
26 armed forces of the United States, the Illinois National Guard,
27 or any reserve component of the armed forces of the United
28 States. "Member of the military" includes those persons engaged
29 in (i) active duty, (ii) training or education under the
30 supervision of the United States preliminary to induction into
31 military service, or (iii) a period of active duty with the
32 State of Illinois under Title 10 or Title 32 of the United
33 States Code pursuant to order of the President or the Governor
34 of the State of Illinois.

35 "Outstanding balance" means the total amount owed by the
36 consumer on a loan to a lender, including all principal,

1 finance charges, fees, and charges of every kind.

2 "Payday loan" or "loan" means a loan with a finance charge
3 exceeding an annual percentage rate of 36% and with a term that
4 does not exceed 120 days, including any transaction conducted
5 via any medium whatsoever, including, but not limited to,
6 paper, facsimile, Internet, or telephone, in which:

7 (1) A lender accepts one or more checks dated on the
8 date written and agrees to hold them for a period of days
9 before deposit or presentment, or accepts one or more
10 checks dated subsequent to the date written and agrees to
11 hold them for deposit; or

12 (2) A lender accepts one or more authorizations to
13 debit a consumer's bank account; or

14 (3) A lender accepts an interest in a consumer's wages,
15 including, but not limited to, a wage assignment.

16 "Principal amount" means the amount received by the
17 consumer from the lender due and owing on a loan, excluding any
18 finance charges, interest, fees, or other loan-related
19 charges.

20 "Rollover" means to refinance, renew, amend, or extend a
21 loan beyond its original term.

22 Section 1-15. Applicability.

23 (a) Except as otherwise provided in this Section, this Act
24 applies to any lender that offers or makes a payday loan to a
25 consumer in Illinois.

26 (b) The provisions of this Act apply to any person or
27 entity that seeks to evade its applicability by any device,
28 subterfuge, or pretense whatsoever.

29 (c) Retail sellers who cash checks incidental to a retail
30 sale and who charge no more than the fees as provided by the
31 Check Cashing Act per check for the service are exempt from the
32 provisions of this Act.

33 (d) Banks, savings banks, savings and loan associations,
34 credit unions, and insurance companies organized, chartered,
35 or holding a certificate of authority to do business under the

1 laws of this State or any other state or under the laws of the
2 United States are exempt from the provisions of this Act.

3 (e) A lender, as defined in Section 1-10, that is an agent
4 for a bank, savings bank, savings and loan association, credit
5 union, or insurance company for the purpose of brokering,
6 selling, or otherwise offering payday loans made by the bank,
7 savings bank, savings and loan association, credit union, or
8 insurance company shall be subject to all of the provisions of
9 this Act, except those provisions related to finance charges.

10 Article 2. Payday Loans

11 Section 2-5. Loan terms.

12 (a) Without affecting the right of a consumer to prepay at
13 any time without cost or penalty, no payday loan may have a
14 minimum term of less than 13 days.

15 (b) No payday loan may be made to a consumer if the loan
16 would result in the consumer being indebted to one or more
17 payday lenders for a period in excess of 45 consecutive days.
18 Except as provided under Section 2-40, if a consumer has or has
19 had loans outstanding for a period in excess of 45 consecutive
20 days, no payday lender may offer or make a loan to the consumer
21 for at least 7 calendar days after the date on which the
22 outstanding balance of all payday loans made during the 45
23 consecutive day period is paid in full. For purposes of this
24 subsection, the term "consecutive days" means a series of
25 continuous calendar days in which the consumer has an
26 outstanding balance on one or more payday loans; however, if a
27 payday loan is made to a consumer within 6 days or less after
28 the outstanding balance of all loans is paid in full, those
29 days are counted as "consecutive days" for purposes of this
30 subsection.

31 (c) No lender may make a payday loan to a consumer if the
32 total principal amount of the loan, when combined with the
33 principal amount of all of the consumer's other outstanding
34 payday loans, exceeds \$1,000 or 25% of the consumer's gross

1 monthly income, whichever is less.

2 (d) No payday loan may be made to a consumer who has an
3 outstanding balance on 2 payday loans.

4 (e) No lender may charge more than \$15.50 per \$100 loaned
5 on any payday loan over the term of the loan. Except as
6 provided in Section 2-25, this charge is considered fully
7 earned as of the date on which the loan is made.

8 (f) A lender may not take or attempt to take an interest in
9 any of the consumer's personal property to secure a payday
10 loan.

11 (g) A consumer has the right to redeem a check or any other
12 item described in the definition of payday loan under Section
13 1-10 issued in connection with a payday loan from the lender
14 holding the check or other item at any time before the payday
15 loan becomes payable by paying the full amount of the check or
16 other item.

17 Section 2-7. Wage assignments. Any payday loan that is a
18 transaction in which the lender accepts a wage assignment must
19 meet the requirements of this Act, the requirements of the
20 Illinois Wage Assignment Act, and the requirements of 16 C.F.R.
21 444.2(a)(3)(i) (2003, no subsequent amendments or editions are
22 included). A violation of this Section constitutes a material
23 violation of the Payday Loan Reform Act.

24 Section 2-10. Permitted fees.

25 (a) If there are insufficient funds to pay a check,
26 Automatic Clearing House (ACH) debit, or any other item
27 described in the definition of payday loan under Section 1-10
28 on the day of presentment and only after the lender has
29 incurred an expense, a lender may charge a fee not to exceed
30 \$25. Only one such fee may be collected by the lender with
31 respect to a particular check, ACH debit, or item even if it
32 has been deposited and returned more than once. A lender shall
33 present the check, ACH debit, or other item described in the
34 definition of payday loan under Section 1-10 for payment not

1 more than twice. A fee charged under this subsection (a) is a
2 lender's exclusive charge for late payment.

3 (b) Except for the finance charges described in Section 2-5
4 and as specifically allowed by this Section, a lender may not
5 impose on a consumer any additional finance charges, interest,
6 fees, or charges of any sort for any purpose.

7 Section 2-15. Verification.

8 (a) Before entering into a loan agreement with a consumer,
9 a lender must use a commercially reasonable method of
10 verification to verify that the proposed loan agreement is
11 permissible under this Act.

12 (b) Within 6 months after the effective date of this Act,
13 the Department shall certify that one or more consumer
14 reporting service databases are commercially reasonable
15 methods of verification. Upon certifying that a consumer
16 reporting service database is a commercially reasonable method
17 of verification, the Department shall:

18 (1) provide reasonable notice to all licensees
19 identifying the commercially reasonable methods of
20 verification that are available; and

21 (2) immediately upon certification, require each
22 licensee to use a commercially reasonable method of
23 verification as a means of complying with subsection (a) of
24 this Section.

25 (c) Except as otherwise provided in this Section, all
26 personally identifiable information regarding any consumer
27 obtained by way of the certified database and maintained by the
28 Department is strictly confidential and shall be exempt from
29 disclosure under Section 7(1)(b)(i) of the Freedom of
30 Information Act.

31 (d) Notwithstanding any other provision of law to the
32 contrary, a consumer seeking a payday loan may make a direct
33 inquiry to the consumer reporting service to request a more
34 detailed explanation of the basis for a consumer reporting
35 service's determination that the consumer is ineligible for a

1 new payday loan.

2 (e) In certifying a commercially reasonable method of
3 verification, the Department shall ensure that the certified
4 database:

5 (1) provides real-time access through an Internet
6 connection or, if real-time access through an Internet
7 connection becomes unavailable to lenders due to a consumer
8 reporting service's technical problems incurred by the
9 consumer reporting service, through alternative
10 verification mechanisms, including, but not limited to,
11 verification by telephone;

12 (2) is accessible to the Department and to licensees in
13 order to ensure compliance with this Act and in order to
14 provide any other information that the Department deems
15 necessary;

16 (3) requires licensees to input whatever information
17 is required by the Department;

18 (4) maintains a real-time copy of the required
19 reporting information that is available to the Department
20 at all times and is the property of the Department;

21 (5) provides licensees only with a statement that a
22 consumer is eligible or ineligible for a new payday loan
23 and a description of the reason for the determination; and

24 (6) contains safeguards to ensure that all information
25 contained in the database regarding consumers is kept
26 strictly confidential.

27 (f) The licensee shall update the certified database by
28 inputting all information required under item (3) of subsection
29 (e):

30 (1) on the same day that a payday loan is made;

31 (2) on the same day that a consumer elects a repayment
32 plan, as provided in Section 2-40; and

33 (3) on the same day that a consumer's payday loan is
34 paid in full.

35 (g) A licensee may rely on the information contained in the
36 certified database as accurate and is not subject to any

1 administrative penalty or liability as a result of relying on
2 inaccurate information contained in the database.

3 (h) The certified consumer reporting service shall
4 indemnify the licensee against all claims and actions arising
5 from illegal or willful or wanton acts on the part of the
6 certified consumer reporting service.

7 Section 2-17. Consumer reporting services qualification
8 and bonding.

9 (a) Each consumer reporting service shall have at all times
10 a net worth of not less than \$1,000,000 calculated in
11 accordance with generally accepted accounting principles.

12 (b) Each application for certification under this Act shall
13 be accompanied by a surety bond acceptable to the Department in
14 the amount of \$1,000,000. The surety bond shall be in a form
15 satisfactory to the Department and shall run to the State of
16 Illinois for the benefit of any claimants against the consumer
17 reporting service to secure the faithful performance of its
18 obligations under this Act. The aggregate liability of the
19 surety may exceed the principal sum of the bond. Claimants
20 against the consumer reporting service may themselves bring
21 suit directly on the surety bond or the Department may bring
22 suit on behalf of claimants, either in one action or in
23 successive actions.

24 (c) The surety bond shall remain in effect until
25 cancellation, which may occur only after 90 days' written
26 notice to the Department. Cancellation shall not affect any
27 liability incurred or accrued during that period.

28 (d) The surety bond shall remain in place for 5 years after
29 the consumer reporting service ceases operation in the State.

30 (e) The surety bond proceeds and any cash or other
31 collateral posted as security by a consumer reporting service
32 shall be deemed by operation of law to be held in trust for any
33 claimants under this Act in the event of the bankruptcy of the
34 consumer reporting service.

35 (f) To the extent that any indemnity or fine exceeds the

1 amount of the surety bond described under this Section, the
2 consumer reporting service shall be liable for that amount.

3 (g) Each application for certification under this Act shall
4 be accompanied by a nonrefundable investigation fee of \$2,500,
5 together with an initial certification fee of \$1,000.

6 (h) On or before March 1 of each year, each consumer
7 reporting service qualified under this Section shall pay to the
8 Department a certification fee in the amount of \$1,000.

9 Section 2-20. Required disclosures.

10 (a) Before a payday loan is made, a lender shall deliver to
11 the consumer a pamphlet prepared by the Secretary that:

12 (1) explains, in simple English and Spanish, all of the
13 consumer's rights and responsibilities in a payday loan
14 transaction;

15 (2) includes a toll-free number to the Secretary's
16 office to handle concerns or provide information about
17 whether a lender is licensed, whether complaints have been
18 filed with the Secretary, and the resolution of those
19 complaints; and

20 (3) provides information regarding the availability of
21 debt management services.

22 (b) Lenders shall provide consumers with a written
23 agreement that may be kept by the consumer. The written
24 agreement must include the following information in English and
25 in the language in which the loan was negotiated:

26 (1) the name and address of the lender making the
27 payday loan, and the name and title of the individual
28 employee who signs the agreement on behalf of the lender;

29 (2) disclosures required by the federal Truth in
30 Lending Act;

31 (3) a clear description of the consumer's payment
32 obligations under the loan;

33 (4) the following statement, in at least 14-point bold
34 type face: "You cannot be prosecuted in criminal court to
35 collect this loan." The information required to be

1 disclosed under this subdivision (4) must be conspicuously
2 disclosed in the loan document and shall be located
3 immediately preceding the signature of the consumer; and

4 (5) the following statement, in at least 14-point bold
5 type face:

6 "WARNING: This loan is not intended to meet long-term
7 financial needs. This loan should be used only to meet
8 short-term cash needs. The cost of your loan may be higher
9 than loans offered by other lending institutions. This loan
10 is regulated by the Department of Financial and
11 Professional Regulation."

12 (c) The following notices in English and Spanish must be
13 conspicuously posted by a lender in each location of a business
14 providing payday loans:

15 (1) A notice that informs consumers that the lender
16 cannot use the criminal process against a consumer to
17 collect any payday loan.

18 (2) The schedule of all finance charges to be charged
19 on loans with an example of the amounts that would be
20 charged on a \$100 loan payable in 13 days and a \$400 loan
21 payable in 30 days, giving the corresponding annual
22 percentage rate.

23 (3) In one-inch bold type, a notice to the public in
24 the lending area of each business location containing the
25 following statement:

26 "WARNING: This loan is not intended to meet long-term
27 financial needs. This loan should be used only to meet
28 short-term cash needs. The cost of your loan may be higher
29 than loans offered by other lending institutions. This loan
30 is regulated by the Department of Financial and
31 Professional Regulation."

32 (4) In one-inch bold type, a notice to the public in
33 the lending area of each business location containing the
34 following statement:

35 "INTEREST-FREE REPAYMENT PLAN: If you still owe on one
36 or more payday loans after 35 days, you are entitled to

1 enter into a repayment plan. The repayment plan will give
2 you at least 55 days to repay your loan in installments
3 with no additional finance charges, interest, fees, or
4 other charges of any kind."

5 Section 2-25. Right to cancel future payment obligations. A
6 consumer may cancel future payment obligations on a payday
7 loan, without cost or finance charges, no later than the end of
8 the second business day immediately following the day on which
9 the payday loan agreement was executed. To cancel future
10 payment obligations on a payday loan, the consumer must inform
11 the lender in writing that the consumer wants to cancel the
12 future payment obligations on the payday loan and must return
13 the uncashed proceeds, check or cash, in an amount equal to the
14 principal amount of the loan.

15 Section 2-30. Rollovers prohibited. Rollover of a payday
16 loan by any lender is prohibited. This Section does not
17 prohibit entering into a repayment plan, as provided under
18 Section 2-40.

19 Section 2-35. Proceeds and payments.

20 (a) A lender may issue the proceeds of a loan in the form
21 of a check drawn on the lender's bank account, in cash, by
22 money order, by debit card, or by electronic funds transfer.
23 When the proceeds are issued in the form of a check drawn on
24 the lender's bank account, by money order, or by electronic
25 funds transfer, the lender may not charge a fee for cashing the
26 check, money order, or electronic funds transfer. When the
27 proceeds are issued in cash, the lender must provide the
28 consumer with written verification of the cash transaction and
29 shall maintain a record of the transaction for at least 3
30 years.

31 (b) After each payment made in full or in part on any loan,
32 the lender shall give the consumer making the payment either a
33 signed, dated receipt or a signed, computer-generated receipt

1 showing the amount paid and the balance due on the loan.

2 (c) Before a loan is made, the lender must provide the
3 consumer, or each consumer if there is more than one, with a
4 copy of the loan documents described in Section 2-20.

5 (d) The holder or assignee of any loan agreement or of any
6 check written by a consumer in connection with a payday loan
7 takes the loan agreement or check subject to all claims and
8 defenses of the consumer against the maker.

9 (e) Upon receipt of a check from a consumer for a loan, the
10 lender must immediately stamp the back of the check with an
11 endorsement that states: "This check is being negotiated as
12 part of a loan under the Payday Loan Reform Act, and any holder
13 of this check takes it subject to all claims and defenses of
14 the maker."

15 (f) Loan payments may be electronically debited from the
16 consumer's bank account. Except as provided by federal law, the
17 lender must obtain prior written approval from the consumer.

18 (g) A consumer may prepay on a loan in increments of \$5 or
19 more at any time without cost or penalty.

20 (h) A loan is made on the date on which a loan agreement is
21 signed by both parties, regardless of whether the lender gives
22 any moneys to the consumer on that date.

23 Section 2-40. Repayment plan.

24 (a) At the time a payday loan is made, the lender must
25 provide the consumer with a separate written notice signed by
26 the consumer of the consumer's right to request a repayment
27 plan. The written notice must comply with the requirements of
28 subsection (c).

29 (b) The loan agreement must include the following language
30 in at least 14-point bold type: IF YOU STILL OWE ON ONE OR MORE
31 PAYDAY LOANS AFTER 35 DAYS, YOU ARE ENTITLED TO ENTER INTO A
32 REPAYMENT PLAN. THE REPAYMENT PLAN WILL GIVE YOU AT LEAST 55
33 DAYS TO REPAY YOUR LOAN IN INSTALLMENTS WITH NO ADDITIONAL
34 FINANCE CHARGES, INTEREST, FEES, OR OTHER CHARGES OF ANY KIND.

35 (c) At the time a payday loan is made, on the first page of

1 the loan agreement and in a separate document signed by the
2 consumer, the following shall be inserted in at least 14-point
3 bold type: I UNDERSTAND THAT IF I STILL OWE ON ONE OR MORE
4 PAYDAY LOANS AFTER 35 DAYS, I AM ENTITLED TO ENTER INTO A
5 REPAYMENT PLAN THAT WILL GIVE ME AT LEAST 55 DAYS TO REPAY THE
6 LOAN IN INSTALLMENTS WITH NO ADDITIONAL FINANCE CHARGES,
7 INTEREST, FEES, OR OTHER CHARGES OF ANY KIND.

8 (d) If the consumer has or has had one or more payday loans
9 outstanding for 35 consecutive days, any payday loan
10 outstanding on the 35th consecutive day shall be payable under
11 the terms of a repayment plan as provided for in this Section,
12 if the consumer requests the repayment plan. As to any loan
13 that becomes eligible for a repayment plan under this
14 subsection, the consumer has until 28 days after the default
15 date of the loan to request a repayment plan. Within 48 hours
16 after the request for a repayment plan is made, the lender must
17 prepare the repayment plan agreement and both parties must
18 execute the agreement. Execution of the repayment plan
19 agreement shall be made in the same manner in which the loan
20 was made and shall be evidenced in writing.

21 (e) The terms of the repayment plan for a payday loan must
22 include the following:

23 (1) The lender may not impose any charge on the
24 consumer for requesting or using a repayment plan.
25 Performance of the terms of the repayment plan extinguishes
26 the consumer's obligation on the loan.

27 (2) No lender shall charge the consumer any finance
28 charges, interest, fees, or other charges of any kind,
29 except a fee for insufficient funds, as provided under
30 Section 2-10.

31 (3) The consumer shall be allowed to repay the loan in
32 at least 4 equal installments with at least 13 days between
33 installments, provided that the term of the repayment plan
34 does not exceed 90 days. The first payment under the
35 repayment plan shall not be due before at least 13 days
36 after the repayment plan is signed by both parties. The

1 consumer may prepay the amount due under the repayment plan
2 at any time, without charge or penalty.

3 (4) The length of time between installments may be
4 extended by the parties so long as the total period of
5 repayment does not exceed 90 days. Any such modification
6 must be in writing and signed by both parties.

7 (f) Notwithstanding any provision of law to the contrary, a
8 lender is prohibited from making a payday loan to a consumer
9 who has a payday loan outstanding under a repayment plan and
10 for at least 14 days after the outstanding balance of the loan
11 under the repayment plan and the outstanding balance of all
12 other payday loans outstanding during the term of the repayment
13 plan are paid in full.

14 (g) A lender may not accept postdated checks for payments
15 under a repayment plan.

16 (h) Notwithstanding any provision of law to the contrary, a
17 lender may voluntarily agree to enter into a repayment plan
18 with a consumer at any time. If a consumer is eligible for a
19 repayment plan under subsection (d), any repayment agreement
20 constitutes a repayment plan under this Section and all
21 provisions of this Section apply to that agreement.

22 Section 2-45. Default.

23 (a) No legal proceeding of any kind, including, but not
24 limited to, a lawsuit or arbitration, may be filed or initiated
25 against a consumer to collect on a payday loan until 28 days
26 after the default date of the loan, or, in the case of a payday
27 loan under a repayment plan, for 28 days after the default date
28 under the terms of the repayment plan.

29 (b) Upon and after default, a lender shall not charge the
30 consumer any finance charges, interest, fees, or charges of any
31 kind, other than the insufficient fund fee described in Section
32 2-10.

33 (c) Notwithstanding whether a loan is or has been in
34 default, once the loan becomes subject to a repayment plan, the
35 loan shall not be construed to be in default until the default

1 date provided under the terms of the repayment plan.

2 Section 2-50. Practices concerning members of the
3 military.

4 (a) A lender may not garnish the wages or salaries of a
5 consumer who is a member of the military.

6 (b) In addition to any rights and obligations provided
7 under the federal Servicemembers Civil Relief Act, a lender
8 shall suspend and defer collection activity against a consumer
9 who is a member of the military and who has been deployed to a
10 combat or combat support posting for the duration of the
11 deployment.

12 (c) A lender may not knowingly contact the military chain
13 of command of a consumer who is a member of the military in an
14 effort to collect on a payday loan.

15 (d) Lenders must honor the terms of any repayment plan that
16 they have entered into with any consumer, including a repayment
17 agreement negotiated through military counselors or
18 third-party credit counselors.

19 Section 2-55. Information, reporting, and examination.

20 (a) A licensee shall keep and use books, accounts, and
21 records that will enable the Secretary to determine if the
22 licensee is complying with the provisions of this Act and
23 maintain any other records as required by the Secretary.

24 (b) A licensee shall collect and maintain information
25 annually for a report that shall disclose in detail and under
26 appropriate headings:

27 (1) the total number of payday loans made during the
28 preceding calendar year;

29 (2) the total number of payday loans outstanding as of
30 December 31 of the preceding calendar year;

31 (3) the minimum, maximum, and average dollar amount of
32 payday loans made during the preceding calendar year;

33 (4) the average annual percentage rate and the average
34 term of payday loans made during the preceding calendar

1 year; and

2 (5) the total number of payday loans paid in full, the
3 total number of loans that went into default, and the total
4 number of loans written off during the preceding calendar
5 year.

6 The report shall be verified by the oath or affirmation of
7 the owner, manager, or president of the licensee. The report
8 must be filed with the Secretary no later than March 1 of the
9 year following the year for which the report discloses the
10 information specified in this subsection (b). The Secretary may
11 impose upon the licensee a fine of \$25 per day for each day
12 beyond the filing deadline that the report is not filed.

13 (c) No later than July 31 of the second year following the
14 effective date of this Act, the Department shall publish a
15 biennial report that contains a compilation of aggregate data
16 concerning the payday lending industry and shall make the
17 report available to the Governor, the General Assembly, and the
18 general public.

19 (d) The Department shall have the authority to conduct
20 examinations of the books, records, and loan documents at any
21 time.

22 Section 2-60. Advertising.

23 (a) Advertising for loans transacted under this Act may not
24 be false, misleading, or deceptive. Payday loan advertising, if
25 it states a rate or amount of charge for a loan, must state the
26 rate as an annual percentage rate. No licensee may advertise in
27 any manner so as to indicate or imply that its rates or charges
28 for loans are in any way recommended, approved, set, or
29 established by the State government or by this Act.

30 (b) If any advertisement to which this Section applies
31 states the amount of any installment payment, the dollar amount
32 of any finance charge, or the number of installments or the
33 period of repayment, then the advertisement shall state all of
34 the following items:

35 (1) The amount of the loan.

1 to command the confidence of the public and to warrant the
2 belief that the business will be operated lawfully and
3 fairly and within the provisions and purposes of this Act;
4 and

5 (2) that the applicant has submitted such other
6 information as the Secretary may deem necessary.

7 (c) A license shall be issued for no longer than one year,
8 and no renewal of a license may be provided if a licensee has
9 substantially violated this Act and has not cured the violation
10 to the satisfaction of the Department.

11 (d) A licensee shall appoint, in writing, the Secretary as
12 attorney-in-fact upon whom all lawful process against the
13 licensee may be served with the same legal force and validity
14 as if served on the licensee. A copy of the written
15 appointment, duly certified, shall be filed in the office of
16 the Secretary, and a copy thereof certified by the Secretary
17 shall be sufficient evidence to subject a licensee to
18 jurisdiction in a court of law. This appointment shall remain
19 in effect while any liability remains outstanding in this State
20 against the licensee. When summons is served upon the Secretary
21 as attorney-in-fact for a licensee, the Secretary shall
22 immediately notify the licensee by registered mail, enclosing
23 the summons and specifying the hour and day of service.

24 (e) A licensee must pay an annual fee of \$1,000. In
25 addition to the license fee, the reasonable expense of any
26 examination or hearing by the Secretary under any provisions of
27 this Act shall be borne by the licensee. If a licensee fails to
28 renew its license by December 31, its license shall
29 automatically expire; however, the Secretary, in his or her
30 discretion, may reinstate an expired license upon:

31 (1) payment of the annual fee within 30 days of the
32 date of expiration; and

33 (2) proof of good cause for failure to renew.

34 (f) Not more than one place of business shall be maintained
35 under the same license, but the Secretary may issue more than
36 one license to the same licensee upon compliance with all the

1 provisions of this Act governing issuance of a single license.
2 The location, except those locations already in existence as of
3 June 1, 2005, may not be within one mile of a horse race track
4 subject to the Illinois Horse Racing Act of 1975, within one
5 mile of a facility at which gambling is conducted under the
6 Riverboat Gambling Act, within one mile of the location at
7 which a riverboat subject to the Riverboat Gambling Act docks,
8 or within one mile of any State of Illinois or United States
9 military base or naval installation.

10 (g) No licensee shall conduct the business of making loans
11 under this Act within any office, suite, room, or place of
12 business in which any other business is solicited or engaged in
13 unless the other business is licensed by the Department or, in
14 the opinion of the Secretary, the other business would not be
15 contrary to the best interests of consumers and is authorized
16 by the Secretary in writing.

17 (h) The Secretary shall maintain a list of licensees that
18 shall be available to interested consumers and lenders and the
19 public. The Secretary shall maintain a toll-free number whereby
20 consumers may obtain information about licensees. The
21 Secretary shall also establish a complaint process under which
22 an aggrieved consumer may file a complaint against a licensee
23 or non-licensee who violates any provision of this Act.

24 Section 3-10. Closing of business; surrender of license. At
25 least 10 days before a licensee ceases operations, closes the
26 business, or files for bankruptcy, the licensee shall:

27 (1) Notify the Department of its intended action in
28 writing.

29 (2) With the exception of filing for bankruptcy,
30 surrender its license to the Secretary for cancellation.
31 The surrender of the license shall not affect the
32 licensee's civil or criminal liability for acts committed
33 before or after the surrender or entitle the licensee to a
34 return of any part of the annual license fee.

35 (3) Notify the Department of the location where the

1 books, accounts, contracts, and records will be
2 maintained.

3 The accounts, books, records, and contracts shall be
4 maintained and serviced by the licensee, by another licensee
5 under this Act, or by the Department.

6 Article 4. Administrative Provisions

7 Section 4-5. Prohibited acts. A licensee or unlicensed
8 person or entity making payday loans may not commit, or have
9 committed on behalf of the licensee or unlicensed person or
10 entity, any of the following acts:

11 (1) Threatening to use or using the criminal process in
12 this or any other state to collect on the loan.

13 (2) Using any device or agreement that would have the
14 effect of charging or collecting more fees or charges than
15 allowed by this Act, including, but not limited to,
16 entering into a different type of transaction with the
17 consumer.

18 (3) Engaging in unfair, deceptive, or fraudulent
19 practices in the making or collecting of a payday loan.

20 (4) Using or attempting to use the check provided by
21 the consumer in a payday loan as collateral for a
22 transaction not related to a payday loan.

23 (5) Knowingly accepting payment in whole or in part of
24 a payday loan through the proceeds of another payday loan
25 provided by any licensee.

26 (6) Knowingly accepting any security, other than that
27 specified in the definition of payday loan in Section 1-10,
28 for a payday loan.

29 (7) Charging any fees or charges other than those
30 specifically authorized by this Act.

31 (8) Threatening to take any action against a consumer
32 that is prohibited by this Act or making any misleading or
33 deceptive statements regarding the payday loan or any
34 consequences thereof.

1 (9) Making a misrepresentation of a material fact by an
2 applicant for licensure in obtaining or attempting to
3 obtain a license.

4 (10) Including any of the following provisions in loan
5 documents required by subsection (b) of Section 2-20:

6 (A) a confession of judgment clause;

7 (B) a waiver of the right to a jury trial, if
8 applicable, in any action brought by or against a
9 consumer, unless the waiver is included in an
10 arbitration clause allowed under subparagraph (C) of
11 this paragraph (11);

12 (C) a mandatory arbitration clause that is
13 oppressive, unfair, unconscionable, or substantially
14 in derogation of the rights of consumers; or

15 (D) a provision in which the consumer agrees not to
16 assert any claim or defense arising out of the
17 contract.

18 (11) Selling any insurance of any kind whether or not
19 sold in connection with the making or collecting of a
20 payday loan.

21 (12) Taking any power of attorney.

22 (13) Taking any security interest in real estate.

23 (14) Collecting a delinquency or collection charge on
24 any installment regardless of the period in which it
25 remains in default.

26 (15) Collecting treble damages on an amount owing from
27 a payday loan.

28 (16) Refusing, or intentionally delaying or
29 inhibiting, the consumer's right to enter into a repayment
30 plan pursuant to this Act.

31 (17) Charging for, or attempting to collect,
32 attorney's fees, court costs, or arbitration costs
33 incurred in connection with the collection of a payday
34 loan.

35 (18) Making a loan in violation of this Act.

36 (19) Garnishing the wages or salaries of a consumer who

1 is a member of the military.

2 (20) Failing to suspend or defer collection activity
3 against a consumer who is a member of the military and who
4 has been deployed to a combat or combat-support posting.

5 (21) Contacting the military chain of command of a
6 consumer who is a member of the military in an effort to
7 collect on a payday loan.

8 Section 4-10. Enforcement and remedies.

9 (a) The remedies provided in this Act are cumulative and
10 apply to persons or entities subject to this Act.

11 (b) Any material violation of this Act, including the
12 commission of an act prohibited under Section 4-5, constitutes
13 a violation of the Consumer Fraud and Deceptive Business
14 Practices Act.

15 (c) If any provision of the written agreement described in
16 subsection (b) of Section 2-20 violates this Act, then that
17 provision is unenforceable against the consumer.

18 (d) Subject to the Illinois Administrative Procedure Act,
19 the Secretary may hold hearings, make findings of fact,
20 conclusions of law, issue cease and desist orders, have the
21 power to issue fines of up to \$10,000 per violation, refer the
22 matter to the appropriate law enforcement agency for
23 prosecution under this Act, and suspend or revoke a license
24 granted under this Act. All proceedings shall be open to the
25 public.

26 (e) The Secretary may issue a cease and desist order to any
27 licensee or other person doing business without the required
28 license, when in the opinion of the Secretary the licensee or
29 other person is violating or is about to violate any provision
30 of this Act or any rule or requirement imposed in writing by
31 the Department as a condition of granting any authorization
32 permitted by this Act. The cease and desist order permitted by
33 this subsection (e) may be issued prior to a hearing.

34 The Secretary shall serve notice of his or her action,
35 including, but not limited to, a statement of the reasons for

1 the action, either personally or by certified mail, return
2 receipt requested. Service by certified mail shall be deemed
3 completed when the notice is deposited in the U.S. Mail.

4 Within 10 days of service of the cease and desist order,
5 the licensee or other person may request a hearing in writing.
6 The Secretary shall schedule a hearing within 30 days after the
7 request for a hearing unless otherwise agreed to by the
8 parties.

9 If it is determined that the Secretary had the authority to
10 issue the cease and desist order, he or she may issue such
11 orders as may be reasonably necessary to correct, eliminate, or
12 remedy the conduct.

13 The powers vested in the Secretary by this subsection (e)
14 are additional to any and all other powers and remedies vested
15 in the Secretary by law, and nothing in this subsection (e)
16 shall be construed as requiring that the Secretary shall employ
17 the power conferred in this subsection instead of or as a
18 condition precedent to the exercise of any other power or
19 remedy vested in the Secretary.

20 (f) The Secretary may, after 10 days notice by registered
21 mail to the licensee at the address set forth in the license
22 stating the contemplated action and in general the grounds
23 therefore, fine the licensee an amount not exceeding \$10,000
24 per violation, or revoke or suspend any license issued
25 hereunder if he or she finds that:

26 (1) the licensee has failed to comply with any
27 provision of this Act or any order, decision, finding,
28 rule, regulation, or direction of the Secretary lawfully
29 made pursuant to the authority of this Act; or

30 (2) any fact or condition exists which, if it had
31 existed at the time of the original application for the
32 license, clearly would have warranted the Secretary in
33 refusing to issue the license.

34 The Secretary may fine, suspend, or revoke only the
35 particular license with respect to which grounds for the fine,
36 revocation, or suspension occur or exist, but if the Secretary

1 finds that grounds for revocation are of general application to
2 all offices or to more than one office of the licensee, the
3 Secretary shall fine, suspend, or revoke every license to which
4 the grounds apply.

5 No revocation, suspension, or surrender of any license
6 shall impair or affect the obligation of any pre-existing
7 lawful contract between the licensee and any obligor.

8 The Secretary may issue a new license to a licensee whose
9 license has been revoked when facts or conditions which clearly
10 would have warranted the Secretary in refusing originally to
11 issue the license no longer exist.

12 In every case in which a license is suspended or revoked or
13 an application for a license or renewal of a license is denied,
14 the Secretary shall serve the licensee with notice of his or
15 her action, including a statement of the reasons for his or her
16 actions, either personally, or by certified mail, return
17 receipt requested. Service by certified mail shall be deemed
18 completed when the notice is deposited in the U.S. Mail.

19 An order assessing a fine, an order revoking or suspending
20 a license, or an order denying renewal of a license shall take
21 effect upon service of the order unless the licensee requests a
22 hearing, in writing, within 10 days after the date of service.
23 In the event a hearing is requested, the order shall be stayed
24 until a final administrative order is entered.

25 If the licensee requests a hearing, the Secretary shall
26 schedule a hearing within 30 days after the request for a
27 hearing unless otherwise agreed to by the parties.

28 The hearing shall be held at the time and place designated
29 by the Secretary. The Secretary and any administrative law
30 judge designated by him or her shall have the power to
31 administer oaths and affirmations, subpoena witnesses and
32 compel their attendance, take evidence, and require the
33 production of books, papers, correspondence, and other records
34 or information that he or she considers relevant or material to
35 the inquiry.

36 (g) The costs of administrative hearings conducted

1 pursuant to this Section shall be paid by the licensee.

2 Section 4-15. Bonding.

3 (a) A person or entity engaged in making payday loans under
4 this Act shall post a bond to the Department in the amount of
5 \$50,000 for each location where loans will be made, up to a
6 maximum bond amount of \$500,000.

7 (b) A bond posted under subsection (a) must continue in
8 effect for the period of licensure and for 3 additional years
9 if the bond is still available. The bond must be available to
10 pay damages and penalties to a consumer harmed by a violation
11 of this Act.

12 (c) From time to time the Secretary may require a licensee
13 to file a bond in an additional sum if the Secretary determines
14 it to be necessary. In no case shall the bond be more than the
15 outstanding liabilities of the licensee.

16 Section 4-20. Preemption of administrative rules. Any
17 administrative rule promulgated prior to the effective date of
18 this Act by the Department regarding payday loans is preempted.

19 Section 4-25. Reporting of violations. The Department
20 shall report to the Attorney General all material violations of
21 this Act of which it becomes aware.

22 Section 4-30. Rulemaking; industry review.

23 (a) The Department may make and enforce such reasonable
24 rules, regulations, directions, orders, decisions, and
25 findings as the execution and enforcement of the provisions of
26 this Act require, and as are not inconsistent therewith. All
27 rules, regulations, and directions of a general character shall
28 be printed and copies thereof mailed to all licensees.

29 (b) Within 6 months after the effective date of this Act,
30 the Department shall promulgate reasonable rules regarding the
31 issuance of payday loans by banks, savings banks, savings and
32 loan associations, credit unions, and insurance companies.

1 These rules shall be consistent with this Act and shall be
2 limited in scope to the actual products and services offered by
3 lenders governed by this Act.

4 (c) After the effective date of this Act, the Department
5 shall, over a 3-year period, conduct a study of the payday loan
6 industry to determine the impact and effectiveness of this Act.
7 The Department shall report its findings to the General
8 Assembly within 3 months of the third anniversary of the
9 effective date of this Act. The study shall determine the
10 effect of this Act on the protection of consumers in this State
11 and on the fair and reasonable regulation of the payday loan
12 industry. The study shall include, but shall not be limited to,
13 an analysis of the ability of the industry to use private
14 reporting tools that:

15 (1) ensure substantial compliance with this Act,
16 including real time reporting of outstanding payday loans;
17 and

18 (2) provide data to the Department in an appropriate
19 form and with appropriate content to allow the Department
20 to adequately monitor the industry.

21 The report of the Department shall, if necessary, identify
22 and recommend specific amendments to this Act to further
23 protect consumers and to guarantee fair and reasonable
24 regulation of the payday loan industry.

25 Section 4-35. Judicial review. All final administrative
26 decisions of the Department under this Act are subject to
27 judicial review pursuant to the provisions of the
28 Administrative Review Law and any rules adopted pursuant
29 thereto.

30 Section 4-40. No waivers. There shall be no waiver of any
31 provision of this Act.

32 Section 4-45. Superiority of Act. To the extent this Act
33 conflicts with any other State financial regulation laws, this

1 Act is superior and supersedes those laws for the purposes of
2 regulating payday loans in Illinois, provided that nothing
3 herein shall apply to any lender that is a bank, savings bank,
4 savings and loan association, credit union, or insurance
5 company organized, chartered, or holding a certificate of
6 authority to do business under the laws of this State or any
7 other state or under the laws of the United States.

8 Section 4-50. Severability. The provisions of this Act are
9 severable under Section 1.31 of the Statute on Statutes.

10 Article 90. Amendatory Provisions

11 Section 90-5. The Financial Institutions Code is amended by
12 changing Sections 4 and 6 as follows:

13 (20 ILCS 1205/4) (from Ch. 17, par. 104)

14 Sec. 4. As used in this Act:

15 (a) "Department" means the Department of Financial
16 Institutions.

17 (b) "Director" means the Director of Financial
18 Institutions.

19 (c) "Person" means any individual, partnership, joint
20 venture, trust, estate, firm, corporation, association or
21 cooperative society or association.

22 (d) "Financial institutions" means ambulatory and
23 community currency exchanges, credit unions, guaranteed credit
24 unions, persons engaged in the business of transmitting money
25 to foreign countries or buying and selling foreign money,
26 pawnshops' societies, title insuring or guaranteeing companies,
27 and persons engaged in the business of making loans of \$800 or
28 less, all as respectively defined in the laws referred to in
29 Section 6 of this Act. The term includes sales finance
30 agencies, as defined in the "Sales Finance Agency Act", enacted
31 by the 75th General Assembly.

32 (e) "Payday loan" has the meaning ascribed to that term in

1 the Payday Loan Reform Act.

2 (Source: Laws 1967, p. 2211.)

3 (20 ILCS 1205/6) (from Ch. 17, par. 106)

4 Sec. 6. In addition to the duties imposed elsewhere in this
5 Act, the Department has the following powers:

6 (1) To exercise the rights, powers and duties vested by law
7 in the Auditor of Public Accounts under "An Act to provide for
8 the incorporation, management and regulation of pawners'
9 societies and limiting the rate of compensation to be paid for
10 advances, storage and insurance on pawns and pledges and to
11 allow the loaning of money upon personal property", approved
12 March 29, 1899, as amended.

13 (2) To exercise the rights, powers and duties vested by law
14 in the Auditor of Public Accounts under "An Act in relation to
15 the definition, licensing and regulation of community currency
16 exchanges and ambulatory currency exchanges, and the operators
17 and employees thereof, and to make an appropriation therefor,
18 and to provide penalties and remedies for the violation
19 thereof", approved June 30, 1943, as amended.

20 (3) To exercise the rights, powers, and duties vested by
21 law in the Auditor of Public Accounts under "An Act in relation
22 to the buying and selling of foreign exchange and the
23 transmission or transfer of money to foreign countries",
24 approved June 28, 1923, as amended.

25 (4) To exercise the rights, powers, and duties vested by
26 law in the Auditor of Public Accounts under "An Act to provide
27 for and regulate the business of guaranteeing titles to real
28 estate by corporations", approved May 13, 1901, as amended.

29 (5) To exercise the rights, powers and duties vested by law
30 in the Department of Insurance under "An Act to define,
31 license, and regulate the business of making loans of eight
32 hundred dollars or less, permitting an interest charge thereon
33 greater than otherwise allowed by law, authorizing and
34 regulating the assignment of wages or salary when taken as
35 security for any such loan or as consideration for a payment of

1 eight hundred dollars or less, providing penalties, and to
2 repeal Acts therein named", approved July 11, 1935, as amended.

3 (6) To administer and enforce "An Act to license and
4 regulate the keeping and letting of safety deposit boxes,
5 safes, and vaults, and the opening thereof, and to repeal a
6 certain Act therein named", approved June 13, 1945, as amended.

7 (7) Whenever the Department is authorized or required by
8 law to consider some aspect of criminal history record
9 information for the purpose of carrying out its statutory
10 powers and responsibilities, then, upon request and payment of
11 fees in conformance with the requirements of Section 2605-400
12 of the Department of State Police Law (20 ILCS 2605/2605-400),
13 the Department of State Police is authorized to furnish,
14 pursuant to positive identification, such information
15 contained in State files as is necessary to fulfill the
16 request.

17 (8) To administer the Payday Loan Reform Act.

18 (Source: P.A. 91-239, eff. 1-1-00.)

19 Section 90-10. The Consumer Installment Loan Act is amended
20 by changing Section 21 as follows:

21 (205 ILCS 670/21) (from Ch. 17, par. 5427)

22 Sec. 21. Application of act. This Act does not apply to any
23 person, partnership, association, limited liability company,
24 or corporation doing business under and as permitted by any law
25 of this State or of the United States relating to banks,
26 savings and loan associations, savings banks, credit unions, or
27 licensees under the Residential Mortgage License Act for
28 residential mortgage loans made pursuant to that Act. This Act
29 does not apply to business loans. This Act does not apply to
30 payday loans.

31 (Source: P.A. 90-437, eff. 1-1-98.)

32 Section 90-12. The Interest Act is amended by changing
33 Section 4 as follows:

1 (815 ILCS 205/4) (from Ch. 17, par. 6404)

2 Sec. 4. General interest rate.

3 (1) In all written contracts it shall be lawful for the
4 parties to stipulate or agree that 9% per annum, or any less
5 sum of interest, shall be taken and paid upon every \$100 of
6 money loaned or in any manner due and owing from any person to
7 any other person or corporation in this state, and after that
8 rate for a greater or less sum, or for a longer or shorter
9 time, except as herein provided.

10 The maximum rate of interest that may lawfully be
11 contracted for is determined by the law applicable thereto at
12 the time the contract is made. Any provision in any contract,
13 whether made before or after July 1, 1969, which provides for
14 or purports to authorize, contingent upon a change in the
15 Illinois law after the contract is made, any rate of interest
16 greater than the maximum lawful rate at the time the contract
17 is made, is void.

18 It is lawful for a state bank or a branch of an
19 out-of-state bank, as those terms are defined in Section 2 of
20 the Illinois Banking Act, to receive or to contract to receive
21 and collect interest and charges at any rate or rates agreed
22 upon by the bank or branch and the borrower. It is lawful for a
23 savings bank chartered under the Savings Bank Act or a savings
24 association chartered under the Illinois Savings and Loan Act
25 of 1985 to receive or contract to receive and collect interest
26 and charges at any rate agreed upon by the savings bank or
27 savings association and the borrower.

28 It is lawful to receive or to contract to receive and
29 collect interest and charges as authorized by this Act and as
30 authorized by the Consumer Installment Loan Act and by the
31 "Consumer Finance Act", approved July 10, 1935, as now or
32 hereafter amended, or by the Payday Loan Reform Act. It is
33 lawful to charge, contract for, and receive any rate or amount
34 of interest or compensation with respect to the following
35 transactions:

1 (a) Any loan made to a corporation;

2 (b) Advances of money, repayable on demand, to an
3 amount not less than \$5,000, which are made upon warehouse
4 receipts, bills of lading, certificates of stock,
5 certificates of deposit, bills of exchange, bonds or other
6 negotiable instruments pledged as collateral security for
7 such repayment, if evidenced by a writing;

8 (c) Any credit transaction between a merchandise
9 wholesaler and retailer; any business loan to a business
10 association or copartnership or to a person owning and
11 operating a business as sole proprietor or to any persons
12 owning and operating a business as joint venturers, joint
13 tenants or tenants in common, or to any limited
14 partnership, or to any trustee owning and operating a
15 business or whose beneficiaries own and operate a business,
16 except that any loan which is secured (1) by an assignment
17 of an individual obligor's salary, wages, commissions or
18 other compensation for services, or (2) by his household
19 furniture or other goods used for his personal, family or
20 household purposes shall be deemed not to be a loan within
21 the meaning of this subsection; and provided further that a
22 loan which otherwise qualifies as a business loan within
23 the meaning of this subsection shall not be deemed as not
24 so qualifying because of the inclusion, with other security
25 consisting of business assets of any such obligor, of real
26 estate occupied by an individual obligor solely as his
27 residence. The term "business" shall be deemed to mean a
28 commercial, agricultural or industrial enterprise which is
29 carried on for the purpose of investment or profit, but
30 shall not be deemed to mean the ownership or maintenance of
31 real estate occupied by an individual obligor solely as his
32 residence;

33 (d) Any loan made in accordance with the provisions of
34 Subchapter I of Chapter 13 of Title 12 of the United States
35 Code, which is designated as "Housing Renovation and
36 Modernization";

1 (e) Any mortgage loan insured or upon which a
2 commitment to insure has been issued under the provisions
3 of the National Housing Act, Chapter 13 of Title 12 of the
4 United States Code;

5 (f) Any mortgage loan guaranteed or upon which a
6 commitment to guaranty has been issued under the provisions
7 of the Veterans' Benefits Act, Subchapter II of Chapter 37
8 of Title 38 of the United States Code;

9 (g) Interest charged by a broker or dealer registered
10 under the Securities Exchange Act of 1934, as amended, or
11 registered under the Illinois Securities Law of 1953,
12 approved July 13, 1953, as now or hereafter amended, on a
13 debit balance in an account for a customer if such debit
14 balance is payable at will without penalty and is secured
15 by securities as defined in Uniform Commercial
16 Code-Investment Securities;

17 (h) Any loan made by a participating bank as part of
18 any loan guarantee program which provides for loans and for
19 the refinancing of such loans to medical students, interns
20 and residents and which are guaranteed by the American
21 Medical Association Education and Research Foundation;

22 (i) Any loan made, guaranteed, or insured in accordance
23 with the provisions of the Housing Act of 1949, Subchapter
24 III of Chapter 8A of Title 42 of the United States Code and
25 the Consolidated Farm and Rural Development Act,
26 Subchapters I, II, and III of Chapter 50 of Title 7 of the
27 United States Code;

28 (j) Any loan by an employee pension benefit plan, as
29 defined in Section 3 (2) of the Employee Retirement Income
30 Security Act of 1974 (29 U.S.C.A. Sec. 1002), to an
31 individual participating in such plan, provided that such
32 loan satisfies the prohibited transaction exemption
33 requirements of Section 408 (b) (1) (29 U.S.C.A. Sec. 1108
34 (b) (1)) or Section 2003 (a) (26 U.S.C.A. Sec. 4975 (d)
35 (1)) of the Employee Retirement Income Security Act of
36 1974;

1 (k) Written contracts, agreements or bonds for deed
2 providing for installment purchase of real estate;

3 (l) Loans secured by a mortgage on real estate;

4 (m) Loans made by a sole proprietorship, partnership,
5 or corporation to an employee or to a person who has been
6 offered employment by such sole proprietorship,
7 partnership, or corporation made for the sole purpose of
8 transferring an employee or person who has been offered
9 employment to another office maintained and operated by the
10 same sole proprietorship, partnership, or corporation;

11 (n) Loans to or for the benefit of students made by an
12 institution of higher education.

13 (2) Except for loans described in subparagraph (a), (c),
14 (d), (e), (f) or (i) of subsection (1) of this Section, and
15 except to the extent permitted by the applicable statute for
16 loans made pursuant to Section 4a or pursuant to the Consumer
17 Installment Loan Act:

18 (a) Whenever the rate of interest exceeds 8% per annum
19 on any written contract, agreement or bond for deed
20 providing for the installment purchase of residential real
21 estate, or on any loan secured by a mortgage on residential
22 real estate, it shall be unlawful to provide for a
23 prepayment penalty or other charge for prepayment.

24 (b) No agreement, note or other instrument evidencing a
25 loan secured by a mortgage on residential real estate, or
26 written contract, agreement or bond for deed providing for
27 the installment purchase of residential real estate, may
28 provide for any change in the contract rate of interest
29 during the term thereof. However, if the Congress of the
30 United States or any federal agency authorizes any class of
31 lender to enter, within limitations, into mortgage
32 contracts or written contracts, agreements or bonds for
33 deed in which the rate of interest may be changed during
34 the term of the contract, any person, firm, corporation or
35 other entity not otherwise prohibited from entering into
36 mortgage contracts or written contracts, agreements or

1 bonds for deed in Illinois may enter into mortgage
2 contracts or written contracts, agreements or bonds for
3 deed in which the rate of interest may be changed during
4 the term of the contract, within the same limitations.

5 (3) In any contract or loan which is secured by a mortgage,
6 deed of trust, or conveyance in the nature of a mortgage, on
7 residential real estate, the interest which is computed,
8 calculated, charged, or collected pursuant to such contract or
9 loan, or pursuant to any regulation or rule promulgated
10 pursuant to this Act, may not be computed, calculated, charged
11 or collected for any period of time occurring after the date on
12 which the total indebtedness, with the exception of late
13 payment penalties, is paid in full.

14 For purposes of this Section, a prepayment shall mean the
15 payment of the total indebtedness, with the exception of late
16 payment penalties if incurred or charged, on any date before
17 the date specified in the contract or loan agreement on which
18 the total indebtedness shall be paid in full, or before the
19 date on which all payments, if timely made, shall have been
20 made. In the event of a prepayment of the indebtedness which is
21 made on a date after the date on which interest on the
22 indebtedness was last computed, calculated, charged, or
23 collected but before the next date on which interest on the
24 indebtedness was to be calculated, computed, charged, or
25 collected, the lender may calculate, charge and collect
26 interest on the indebtedness for the period which elapsed
27 between the date on which the prepayment is made and the date
28 on which interest on the indebtedness was last computed,
29 calculated, charged or collected at a rate equal to 1/360 of
30 the annual rate for each day which so elapsed, which rate shall
31 be applied to the indebtedness outstanding as of the date of
32 prepayment. The lender shall refund to the borrower any
33 interest charged or collected which exceeds that which the
34 lender may charge or collect pursuant to the preceding
35 sentence. The provisions of this amendatory Act of 1985 shall
36 apply only to contracts or loans entered into on or after the

1 effective date of this amendatory Act, but shall not apply to
2 contracts or loans entered into on or after that date that are
3 subject to Section 4a of this Act, the Consumer Installment
4 Loan Act, the Payday Loan Reform Act, or the Retail Installment
5 Sales Act, or that provide for the refund of precomputed
6 interest on prepayment in the manner provided by such Act.

7 (Source: P.A. 92-483, eff. 8-23-01.)

8 Section 90-15. The Consumer Fraud and Deceptive Business
9 Practices Act is amended by changing Section 2Z as follows:

10 (815 ILCS 505/2Z) (from Ch. 121 1/2, par. 262Z)

11 Sec. 2Z. Violations of other Acts. Any person who knowingly
12 violates the Automotive Repair Act, the Home Repair and
13 Remodeling Act, the Dance Studio Act, the Physical Fitness
14 Services Act, the Hearing Instrument Consumer Protection Act,
15 the Illinois Union Label Act, the Job Referral and Job Listing
16 Services Consumer Protection Act, the Travel Promotion
17 Consumer Protection Act, the Credit Services Organizations
18 Act, the Automatic Telephone Dialers Act, the Pay-Per-Call
19 Services Consumer Protection Act, the Telephone Solicitations
20 Act, the Illinois Funeral or Burial Funds Act, the Cemetery
21 Care Act, the Safe and Hygienic Bed Act, the Pre-Need Cemetery
22 Sales Act, the High Risk Home Loan Act, the Payday Loan Reform
23 Act, subsection (a) or (b) of Section 3-10 of the Cigarette Tax
24 Act, subsection (a) or (b) of Section 3-10 of the Cigarette Use
25 Tax Act, the Electronic Mail Act, paragraph (6) of subsection
26 (k) of Section 6-305 of the Illinois Vehicle Code, or the
27 Automatic Contract Renewal Act commits an unlawful practice
28 within the meaning of this Act.

29 (Source: P.A. 92-426, eff. 1-1-02; 93-561, eff. 1-1-04; 93-950,
30 eff. 1-1-05.)

31 Article 99. Effective Date

32 Section 99. Effective date. This Act takes effect 180 days

1 after becoming law.